

## CHAPTER 2002-207

### House Bill No. 1977

An act relating to state procurement; amending s. 61.1826, F.S.; conforming a cross reference to changes made by this act; amending s. 120.57, F.S.; specifying the manner in which notice of decisions and intended decisions concerning procurement are to be provided; defining the term “electronically post”; providing procedures applicable to a protest of a contract solicitation or award; specifying the type of notice that starts the time for filing a notice of protest; providing that state holidays are not included in the time for filing a notice of protest; specifying the types of submissions that may be considered in a protest; clarifying and conforming provisions; amending ss. 283.32, 283.33, 283.34, and 283.35, F.S.; conforming the sections to changes made by the act; conforming a cross reference; amending s. 287.001, F.S.; clarifying legislative intent with respect to state procurement; amending s. 287.012, F.S.; revising definitions; defining additional terms; amending s. 287.017, F.S.; eliminating the requirement for annual adjustments of purchasing categories; amending 287.022, F.S.; conforming a cross reference to changes made by the act; amending ss. 287.032 and 287.042, F.S.; revising the purpose, duties, and functions of the Department of Management Services; clarifying and conforming provisions; providing procedures for the listing of commodities and services offered by certain nonprofit agencies organized pursuant to ch. 413, F.S.; providing that eligible users may purchase from state term contracts; providing that the protest bond amount shall be a specified percentage of the estimated contract amount; providing that official bank checks may be accepted in lieu of a bond; requiring the department to develop procedures for issuing solicitations, requests for information, and requests for quotes; prescribing the manner in which solicitations are to be noticed; providing an exception for the 10-day notice requirement for solicitations; requiring the department to develop procedures for electronic posting; requiring the department to develop methods for conducting question-and-answer sessions regarding solicitations; providing that the Office of Supplier Diversity may consult with the department regarding solicitation distribution procedures; providing that rules may be distributed to agencies via an electronic medium; requiring written documentation of certain agency decisions; eliminating the department’s responsibilities for the management of state surplus property; amending s. 287.045, F.S., relating to the procurement of products and materials with recycled content; clarifying and conforming provisions; amending s. 287.056, F.S.; specifying entities that are required or permitted to purchase from purchasing agreements and state term contracts; providing for use of a request for quote to obtain pricing or services information; amending s. 287.057, F.S.; clarifying and conforming provisions; revising

requirements for solicitations; providing for question-and-answer sessions regarding solicitations; providing requirements for emergency procurements; providing that agency purchases from certain existing contracts are exempt from competitive solicitation requirements; providing requirements for single-source procurement; conforming cross references to changes made by the act; providing requirements for contract renewal; clarifying that exceptional purchase contracts may not be renewed; providing requirements for persons appointed to evaluate proposals and replies and to negotiate contracts; prohibiting certain persons or entities from receiving contracts; specifying the entities responsible for developing an on-line procurement system; amending s. 287.0572, F.S.; clarifying and conforming provisions; requiring that the cost of all state contracts be evaluated by present-value methodology; amending s. 287.058, F.S.; revising provisions relating to renewal which must be contained in a contract; clarifying that exceptional purchase contracts may not be renewed; conforming cross references to changes made by the act; amending s. 287.059, F.S.; clarifying and conforming provisions; amending s. 287.0595, F.S.; revising requirements for the Department of Environmental Protection with respect to contracts for pollution response; clarifying and conforming provisions; repealing s. 287.073, F.S., relating to the procurement of information technology resources; amending s. 287.0731, F.S.; revising requirements for a team for contract negotiations; amending ss. 287.0822, 287.084, 287.087, 287.093, and 287.09451, F.S., relating to procurement of beef and pork, preference for state businesses and businesses with drug-free-workplace programs, minority business enterprises, and the Office of Supplier Diversity; clarifying and conforming provisions to changes made by the act; amending s. 287.095, F.S.; providing requirements for certain products produced by a certain corporation; providing an exception; repealing s. 287.121, F.S., relating to assistance by the Department of Legal Affairs; amending ss. 287.133 and 287.134, F.S., relating to prohibitions on the transaction of business with certain entities convicted of public entity crimes and entities that have engaged in discrimination; clarifying and conforming provisions; amending s. 287.1345, F.S., relating to the surcharge on users of state term contracts; authorizing the Department of Management Services to collect surcharges from eligible users; amending s. 373.610, F.S.; clarifying that the provision applies to contractors; amending s. 373.611, F.S.; providing that water management districts may contract to limit damages recoverable from certain entities during procurement; amending ss. 394.457, 394.47865, 402.73, 408.045, 445.024 and 455.2177, F.S., relating to the power to contract by the Department of Children and Family Services, the Agency for Health Care Administration, the Regional Work Force Boards, and the Department of Business and Professional Regulation and their power to privatize and procure; conforming cross references; clarifying and conforming provisions; amending s. 413.033, F.S.; revising a definition; amending s.

413.035, F.S.; providing content requirements for certain products; amending s. 413.036, F.S.; providing that ch. 287, F.S., does not apply to purchases made from certain nonprofit agencies; specifying provisions required to be contained in certain state procurement contracts; limiting purchases of products or services by state agencies from sources other than the nonprofit agency for the blind or severely handicapped under certain circumstances; amending s. 413.037, F.S., to conform; repealing s. 413.034, F.S., relating to the Commission for Purchase from the Blind or Other Severely Handicapped; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 2. Subsection (3) of section 120.57, Florida Statutes, is amended to read:

120.57 Additional procedures for particular cases.—

(3) ADDITIONAL PROCEDURES APPLICABLE TO PROTESTS TO CONTRACT SOLICITATION BIDDING OR AWARD.—Agencies subject to this chapter shall use ~~utilize~~ the uniform rules of procedure, which provide procedures for the resolution of protests arising from the contract solicitation or award ~~bidding~~ process. Such rules shall at least provide that:

(a) The agency shall provide notice of a its ~~its~~ decision or intended decision concerning a bid solicitation, or a contract award, or exceptional purchase by electronic posting. ~~bid solicitation, or a contract award, or exceptional purchase by~~ This notice shall contain the following statement: “Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, shall constitute a waiver of proceedings under chapter 120, Florida Statutes.” as follows:

~~1. For a bid solicitation, notice of a decision or intended decision shall be given by United States mail or by hand delivery.~~

~~2. For any decision of the Department of Management Services concerning a request by an agency for approval of an exceptional purchase under part I of chapter 287 and the rules of the Department of Management Services, notice of a decision or intended decision shall be given by posting such notice in the office of the Department of Management Services.~~

~~3. For any other agency decision, notice of a decision or intended decision shall be given either by posting the bid tabulation at the location where the bids were opened or by certified United States mail or other express delivery service, return receipt requested.~~

~~The notice required by this paragraph shall contain the following statement: “Failure to file a protest within the time prescribed in s. 120.57(3), Florida~~

~~Statutes, shall constitute a waiver of proceedings under chapter 120, Florida Statutes.~~"

(b) Any person who is adversely affected by the agency decision or intended decision shall file with the agency a notice of protest in writing within 72 hours after the posting of the notice of decision or intended decision ~~bid tabulation or after receipt of the notice of the agency decision or intended decision~~ and shall ~~file a formal written protest within 10 days after filing the notice of protest.~~ With respect to a protest of the terms, conditions, and specifications contained in a solicitation, including any provisions governing the methods for ranking bids, proposals, or replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract ~~an invitation to bid or in a request for proposals,~~ the notice of protest shall be filed in writing within 72 hours after the ~~posting receipt of notice of the solicitation, project plans and specifications in an invitation to bid or request for proposals,~~ and The formal written protest shall be filed within 10 days after the date the notice of protest is filed. Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings under this chapter. The formal written protest shall state with particularity the facts and law upon which the protest is based. Saturdays, Sundays, and state legal holidays shall be excluded in the computation of the 72-hour time periods provided by this paragraph.

(c) Upon receipt of the formal written protest ~~that which~~ has been timely filed, the agency shall stop the ~~bid solicitation process or the contract award process~~ until the subject of the protest is resolved by final agency action, unless the agency head sets forth in writing particular facts and circumstances which require the continuance of the ~~bid solicitation process or the contract award process~~ without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare.

(d)1. The agency shall provide an opportunity to resolve the protest by mutual agreement between the parties within 7 days, excluding Saturdays, Sundays, and state legal holidays, after receipt of a formal written protest.

2. If the subject of a protest is not resolved by mutual agreement within 7 days, excluding Saturdays, Sundays, and state legal holidays, after receipt of the formal written protest, and if there is no disputed issue of material fact, an informal proceeding shall be conducted pursuant to subsection (2) and applicable agency rules before a person whose qualifications have been prescribed by rules of the agency.

3. If the subject of a protest is not resolved by mutual agreement within 7 days, excluding Saturdays, Sundays, and state legal holidays, after receipt of the formal written protest, and if there is a disputed issue of material fact, the agency shall refer the protest to the division for proceedings under subsection (1).

(e) Upon receipt of a formal written protest referred pursuant to this subsection, the director of the division shall expedite the hearing and assign an administrative law judge who shall commence a hearing within 30 days after the receipt of the formal written protest by the division and enter a recommended order within 30 days after the hearing or within 30 days after receipt of the hearing transcript by the administrative law judge, whichever is later. Each party shall be allowed 10 days in which to submit written exceptions to the recommended order. A final order shall be entered by the agency within 30 days of the entry of a recommended order. The provisions of this paragraph may be waived upon stipulation by all parties.

(f) In a protest to an invitation to bid or request for proposals procurement ~~competitive procurement protest~~, no submissions made after the bid or proposal opening which amend or supplement ~~amending or supplementing~~ the bid or proposal shall be considered. In a protest to an invitation to negotiate procurement, no submissions made after the agency announces its intent to award a contract, reject all replies, or withdraw the solicitation which amend or supplement the reply shall be considered. Unless otherwise provided by statute, the burden of proof shall rest with the party protesting the proposed agency action. In a competitive-procurement protest, other than a rejection of all bids, proposals, or replies, the administrative law judge shall conduct a de novo proceeding to determine whether the agency's proposed action is contrary to the agency's governing statutes, the agency's rules or policies, or the solicitation bid ~~or proposal~~ specifications. The standard of proof for such proceedings shall be whether the proposed agency action was clearly erroneous, contrary to competition, arbitrary, or capricious. In any bid-protest proceeding contesting an intended agency action to reject all bids, proposals, or replies, the standard of review by an administrative law judge shall be whether the agency's intended action is illegal, arbitrary, dishonest, or fraudulent.

(g) For purposes of this subsection, the definitions in s. 287.012 apply.